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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Falkland Islands (Malvinas)*

Working paper prepared by the Secretariat

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* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas) (see ST/CS/SER.A/42).

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I. General

1. The Falkland Islands (Malvinas) is a Non-Self-Governing Territory administered by the United Kingdom of Great Britain and Northern Ireland, comprising two large islands, known as East and West Falkland, as well as some 200 smaller islands, and a total area of about 12,173 square kilometres. The Falkland Islands (Malvinas) are situated in the South Atlantic, about 770 kilometres north-east of Cape Horn and about 480 kilometres east of the South American mainland. South Georgia, located about 1,300 kilometres south-east of the Falkland Islands (Malvinas) group, and the South Sandwich Islands, located about 750 kilometres east-south-east of South Georgia, are administered from the Falkland Islands (Malvinas) as a separate territory; the Governor of the Falkland Islands (Malvinas) acts concurrently as Commissioner for South Georgia and the South Sandwich Islands. According to the latest census (2006), the population of the Territory was 2,478 (not including residents temporarily absent and civilians working in conjunction with the Ministry of Defence), up from 2,391 in 2001 and representing the largest population since 1931. A dispute exists between the Governments of Argentina and the United Kingdom concerning sovereignty over the Falkland Islands (Malvinas).

II. Constitutional and political developments

2. A new constitution was approved in 2008 and came into force on 1 January 2009 (Statutory Instrument 2008, No. 2846).[1] According to the administering Power, as compared with the 1985 Constitution, the new Constitution enhances local democracy, establishes a greater degree of internal self-government and provides greater transparency and accountability, for instance through the creation of a Public Accounts Committee and a Complaints Commissioner. Moreover, it is in line with the provisions of the European Convention on Human Rights and the International Covenant on Civil and Political Rights. As before, legislative councillors elect a Speaker to chair what is now termed the Legislative Assembly, which meets regularly. They appoint a Chief Executive as head of the civil service to implement policy. Each councillor takes responsibility for a particular portfolio and works closely with the relevant departments. Councillors do not have ministerial responsibility. Questions of policy are considered by the Executive Council, which consists of three members of the Legislative Council who are elected annually from their own number, in addition to two ex officio members who have no voting rights. The Attorney-General and the Commander of British Forces on the Islands have the right to attend meetings of the Executive Council but do not vote. The Governor retains responsibility for foreign policy and defence. By the terms of the new Constitution, the Governor, with the advice and consent of the Legislative Assembly, may make laws for the peace, order and good government of the Territory, while full power to make laws for the peace, order and good government of the Territory is reserved for the British Crown.

Note: The information contained in this working paper has been derived from information transmitted to the Secretary-General by the administering Power under Article 73 *e* of the Charter of the United Nations as well as information provided by the Government of Argentina and that available in published sources.

[1] Information provided by the administering Power, 13 January 2009.

3. The last general elections were held for all eight members of the then Legislative Council on 17 November 2005, five from the Territory's urban constituency (Stanley) and three from the Camp (i.e., outside the Territory's only town), for a four-year term. The current Governor, Alan Huckle, took up his appointment in August 2006.

4. Regarding the reform process of the 1985 Constitution, which itself had been rejected by Argentina at the time (see A/40/132), the Argentine Government protested on 6 November 2008 against what it termed "a unilateral act" carried out by the United Kingdom "whereby it claims to have adopted a new 'constitution' for the Malvinas Islands", in "disregard for the resolutions on the question of the Malvinas Islands duly adopted by the General Assembly and the Special Committee on Decolonization" and in "violation of the spirit of the provisional understandings under the sovereignty formula" reached by Argentina and the United Kingdom (see A/63/542, annex I).

5. With reference to Argentina's protest, on 3 December 2008 the United Kingdom rejected the assertions that the Falkland Islands Constitution Order 2008 was contrary, either in practice or in spirit, to any aspect of the Joint Statements agreed between the United Kingdom and Argentina or that it contravened any General Assembly resolutions (see A/63/589).

6. In a letter dated 3 January 2009 from the Deputy Permanent Representative of the Permanent Mission of Argentina to the United Nations addressed to the Secretary-General (A/63/671, annex), the Government of Argentina transmitted the text of its press release "on the occasion of the latest anniversary of the illegal occupation of the Malvinas Islands by the United Kingdom", which inter alia stated that the reform process was a "new expression of disregard" for the aforementioned resolutions and "another violation" of the spirit of the aforementioned provisional bilateral understandings. According to information provided by Argentina, that press release reiterated in the same terms as the press release issued by it on 10 June 2008 in connection with the observance of the "Day of Affirmation of Argentine Rights over the Malvinas Islands and the Antarctic Sector", Argentina's "continued willingness to resume the process of bilateral negotiations with the United Kingdom in order to find a definitive solution to the sovereignty dispute and settle this anachronistic colonial situation that is incompatible with developments in today's world".

7. In a letter dated 21 January 2009 from the Permanent Representative of the United Kingdom to the United Nations addressed to the Secretary-General (A/63/690), the Permanent Representative referred to Argentina's letter dated 3 January 2009. Rejecting claims made by Argentina and stating that the principle of self-determination underlay the United Kingdom's position on the sovereignty of the Falkland Islands (Malvinas), the letter concluded that the "United Kingdom continues to believe that there are many opportunities for cooperation in the South Atlantic under the sovereignty formula which would be of mutual benefit. The United Kingdom has made a number of proposals in this respect in recent years and remains keen to foster a constructive relationship with Argentina and to promote practical cooperation in the South Atlantic".

III. Budget

8. The Territory's financial year runs from 1 July to 30 June. According to the administering Power, the Territory maintains a balanced budget. For 2008/2009, the approved estimate for total revenue was £45 million, of which £17 million was estimated to come from fisheries, £6 million from investment income, £9.5 million from taxation and £5.1 million from public works. During the same period, the revised estimate for expenditure was £44 million.[1]

IV. Mine clearance

9. Under the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, known as the Ottawa Convention, on 11 October 2001 the Governments of Argentina and the United Kingdom concluded an agreement, covered by the formula on sovereignty, regarding a feasibility study of the clearance of landmines in the Falkland Islands (Malvinas).

10. As previously reported, the work of the joint working party established under the 2001 agreement was concluded with the completion of the feasibility study on the clearance of landmines in the Falkland Islands (Malvinas) on 5 October 2007. Under the Ottawa Convention, States parties are obliged to clear anti-personnel mines in mined areas within 10 years of the Convention's entry into force.

11. According to the administering Power, for the United Kingdom this meant demining the Territory by March 2009 or seeking an extension to that deadline as provided for under the Convention. The indicative clearance plan set out in the feasibility study envisaged full clearance taking 10 years. On that basis the United Kingdom submitted on 31 May 2008 a request for a 10-year extension to its deadline, to be considered at the Ninth Meeting of States Parties to the Ottawa Convention.

12. According to information provided by Argentina, in a note dated 9 July 2008 and officially circulated to all States parties to the Convention, Argentina conveyed its rejection of the United Kingdom's request "as an illegitimate unilateral act", taking into account that "the Malvinas, South Georgias and South Sandwich Islands and the surrounding maritime areas are an integral part of the national territory of Argentina and are illegitimately occupied".

13. On 28 November 2008, the Ninth Meeting of States Parties to the Ottawa Convention decided by consensus to grant the United Kingdom an extension until 1 March 2019.[2] At that meeting, the United Kingdom announced its intent to proceed with clearance of three mined areas in the Territory and that this would involve establishing a national mine action authority, which would include representation from the Government of the Territory. For its part, Argentina referred at the same meeting to its intention to submit an article 5 extension request with regard to the mined areas in the Falkland Islands (Malvinas), which was expected to happen later in 2009.

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[2] See www.apminebanconvention.org/fileadmin/pdf/mbc/clearing-mined-areas/art5_extensions/countries/UK-Ext-Decision-28Nov2008.pdf.

V. Economic conditions

A. General

14. According to the administering Power, the gross domestic product of the Islands is estimated to be about £75 million annually. Increasing revenue from corporation tax indicates a growing private sector. The fishing industry remains the most important sector of the economy, and the tourism sector is seeing rapid growth. The Territory's stated aim is to ensure a diverse and sustainable economy for the future. The latest Islands Plan (2008-2012) is available on the Internet. It outlines a vision for improved financial management, quality of life and communications while ensuring a sustainable economy.[3]

15. The results of the latest census, taken in 2006, reveal that the average Islander lives in town, works an average of 40 to 49 hours per week and is paid on average between £16,800 and £17,600 per annum.[3]

B. Fisheries

16. Loligo and illex squid are the mainstay of the fisheries and economy of the Territory, as previously reported by the administering Power. In addition to those two squid species, a number of finfish are targeted, including southern blue whiting, hake and hoki. The Fisheries Department is responsible for administering the fisheries sector. Following the enactment of the Fisheries (Conservation and Management) Ordinance in 2005, the Territory began implementation of the new licensing regime. More information on the subject is contained in the 2007 and 2008 working papers prepared by the Secretariat (see A/AC.109/2007/13 and A/AC.109/2008/13). According to information provided, Argentina continued to censure this regime in 2008, including through domestic legislation in respect of vessels with no licence issued by the Argentine authorities.[4]

C. Tourism

17. Tourism is the second largest contributor to the Territory's economy, valued at approximately £5 million per annum.[5] There has been a significant expansion in the Falkland Islands (Malvinas) tourism sector in recent years, with an average growth rate in visitor arrivals of 21 per cent between the 2000/2001 and 2007/2008 seasons. According to the administering Power, approximately 62,000 tourists, largely from cruise ships, visited the Falkland Islands (Malvinas) in 2007/2008, and the Tourist Board predicts that annual tourist arrivals will exceed 100,000 over the next few seasons if strong growth continues.

D. Agriculture, land tenure and livestock

18. According to the administering Power, the most significant change in agriculture in recent years has been the development of the meat industry and of

[3] See http://www.fco.gov.uk.

[4] Mercopress, 29 May 2008; www.clarin.com/diario/2008/05/29/elpais/p-01201.htm.

[5] See http://www.visitorfalklands.com/images/stories/Downloads/0809VisitorguideENGLISH.pdf.

farming adjusted to produce dual-purpose sheep that will maximize returns from both meat and wool. One million kilograms of wool were exported from the Islands in 2007, and 31,000 sheep and lambs were processed through the Sand Bay abattoir for export in 2008. The Territory has an ongoing 10-year plan to support agriculture, although spending under the plan has decreased every year since 2004 as farmers invest more of their own funds into their production units. Pasture and genetic improvement programmes lie at the heart of the Government strategy. The amount of farmland in use has declined, owing to farming methods becoming more intensive to meet export market requirements. Some landowners have moved out of stock management, either completely or partially, when able to earn income from other sources, while some younger Islanders have taken over family farms or bought new properties.

E. Transport, communications and other basic facilities

19. According to the administering Power and media reports, the Territory is nearing the end of an extensive road-building programme (with an allocation of £450,000 from the Camp roads budget for 2008), which has involved the construction of a road network to connect outlying settlements and farms. In addition, there is a coastal shipping service to the community outside Stanley supplying fuel and stores to settlements on the east, west and outlying islands, as well as a regular ferry service between the two main islands, carrying both passengers and freight. The ferry service has recently been upgraded with the acquisition of a new vessel and the construction of purpose-built terminals at optimal locations.

20. In 2008, the LanChile airline continued to provide regular weekly service between Punta Arenas, Chile, and the Falkland Islands (Malvinas), including two monthly stopovers in Río Gallegos on mainland Argentina, in accordance with the provisions of the Joint Statement of 14 July 1999 between Argentina and the United Kingdom. Moreover, according to information provided by Argentina, under the Exchange of Notes Agreement of 23 February 2001, private flights were authorized, as were 21 medical evacuation flights from the Falkland Islands (Malvinas) to mainland Argentina and Chile. As previously reported, since 3 November 2003, no non-regular flight between third countries and the Falkland Islands (Malvinas) by any company flying under the flag of a third country has been authorized. No agreement between Argentina and the United Kingdom has been reached on the Argentine proposal made in 2003 aimed at the establishment of direct, regular air service between mainland Argentina and the Falkland Islands (Malvinas) operated by an Argentine air company.

21. Communications, both internally and with the outside world, have improved over the past several years. According to the administering Power, there are well over 1,000 computers on the islands, and in 2008 857 computers were connected to broadband Internet, while 248 computers used a dial-up connection. There were also 3,044 mobile and 1,994 fixed-line telephones.

22. The Territory's first major wind farm became operational in 2007 and has been meeting 25 per cent of urban electricity needs, as previously reported. By November 2008, over 3,631,000 units of electricity had been generated by the turbines. The capacity of the wind farm is planned to double by 2010, with the expectation that

40 per cent of the Territory's urban electricity use will be met from wind power as a result. On a smaller scale, wind turbines provide power to homesteads and small settlements throughout the islands. According to the administering Power, the Falkland Islands Development Corporation offers a 50 per cent grant for wind turbine costs to farmers.

23. More information on transport arrangements, communications and other basic facilities is contained in previous working papers prepared by the Secretariat.

F. Environment

24. According to the administering Power, the Falkland Islands (Malvinas) works to uphold a number of environmental treaties, as previously reported. For its part, according to information provided by Argentina, the Argentine Republic has rejected the territorial application effected by the United Kingdom of the United Nations Framework Convention on Climate Change and the Kyoto Protocol, the Agreement on the Conservation of Albatrosses and Petrels, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on the Conservation of Migratory Species of Wild Animals and the Ramsar Convention on Wetlands, on the grounds that the Falkland Islands (Malvinas), South Georgia and the South Sandwich Islands, along with the surrounding maritime areas, were an integral part of the territory of Argentina. More information on the subject is contained in the previous working paper (A/AC.109/2008/13) prepared by the Secretariat.

VI. Social conditions

A. General

25. According to the administering Power, the Territory observes the principles contained in the Universal Declaration of Human Rights. The provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms have been extended to the Falkland Islands (Malvinas) by the administering Power. Furthermore, the United Kingdom has extended the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights to the Territory and observes the regular reporting procedures under those instruments. There is no discrimination on the basis of sex in the implementation of articles 2 and 3 of the International Covenant on Civil and Political Rights. The Convention on the Elimination of All Forms of Discrimination against Women, including its Optional Protocol, and the Convention on the Rights of the Child have been applied by the United Kingdom in the Falkland Islands (Malvinas).

26. As previously reported, Argentina has consistently rejected the territorial application by the United Kingdom of these various instruments, as well as the designation of the Territory as an Overseas Dependent Territory of the United Kingdom or any other similar designation. More information on the subject is contained in previous working papers prepared by the Secretariat.

B. Public health

27. The general state of health in the Falkland Islands (Malvinas) is good. According to the administering Power, medical and dental treatment and prescription drugs are free to all Falkland Islands (Malvinas) and United Kingdom residents under a reciprocal health agreement. All medical services are based at the King Edward VII Memorial Hospital in the Territory's town, which provides a full range of primary-care services to the civilian population, military personnel stationed in town and foreign fishing fleet personnel around the Islands. In addition, there is a visiting medical service supporting outlying farm settlements. The hospital has facilities to deal with acute medical and surgical conditions. It has 29 beds, including one maternity and two intensive-care beds. Patients requiring specialist attention are first stabilized and then evacuated to the United Kingdom or Chile or, in emergencies, to Montevideo.

C. Social security and welfare

28. According to the administering Power, the Falkland Islands Retirement Pensions Ordinance provides for mandatory fixed monthly contributions by all employers and by employees between the ages of 17 and 64. The Falkland Islands Pension Scheme Ordinance 1997 provides for a national defined-contribution vehicle through which employers, self-employed individuals and other individuals within the Falkland Islands (Malvinas) can make contributions, under employer-employee agreements or voluntarily, during their working lives and receive a pension upon retirement. A system of social welfare grants and pensions is in place to deal with cases of hardship and disability.

D. Education

29. Education in the Falkland Islands (Malvinas) is free and compulsory for all children between the ages of 5 and 16, with access to preschool (nursery) education from the age of four. According to the administering Power, the Government provides staff, equipment and supplies for education, has a primary and a secondary school in the Territory's town and operates two settlement schools. In the rural areas, younger children either attend the settlement schools or are visited by one of four travelling teachers for two weeks out of every six. There are also daily telephone lessons available in the intervening periods. Students above the age of 16 who qualify in examinations are funded for studies overseas, mostly in the United Kingdom.

30. According to information provided by the administering Power, in 2007/2008 there were 388 schoolchildren being educated in the Falkland Islands (Malvinas), while continuing education past 16 years of age was being provided locally through the training unit of the education service, involving 20 students. Meanwhile, 67 further and higher education pupils were being educated overseas.[1] According to information provided by Argentina, inhabitants of the Falkland Islands (Malvinas) continued to make use of access to the Argentine public education system.

VII. Participation in international organizations and arrangements

31. The Government of the Falkland Islands (Malvinas) participates in activities of the Commonwealth and is a member of the United Kingdom Overseas Territories Association. According to the administering Power, representatives of the Government have participated, as members of the United Kingdom delegation, in discussions on various matters affecting their interests.

32. Under the United Nations Convention on the Law of the Sea, claims for an extended continental shelf by those coastal States for whom the Convention came into force on or before May 1999 are to be submitted to the Commission on the Limits of the Continental Shelf by May 2009. According to the administering Power, the United Kingdom is researching its submission to the Commission in respect of the continental shelf around the Falkland Islands (Malvinas), South Georgia and the South Sandwich Islands and is considering its approach in view of the May 2009 deadline. Plans for that submission have not been finalized. In 2007, the United Kingdom proposed to meet with Argentina on the matter. Meanwhile, according to information provided by Argentina, from 17 April to 31 May 2008, Argentina completed scientific research in areas north-east and south-east of the Falkland Islands (Malvinas), collecting data to be included in its submission to the Commission by the May 2009 deadline.

VIII. Consideration by intergovernmental organizations and forums

33. On 3 June 2008, the General Assembly of the Organization of American States (OAS) adopted a declaration on the question of the Falkland Islands (Malvinas) (AG/DEC. 58 (XXXVIII-O/08)), in which inter alia it welcomed the reaffirmation of the will of the Argentine Government to continue exploring all possible avenues towards a peaceful settlement of the dispute and its constructive approach towards the inhabitants of the Islands. It reaffirmed the need for the Governments of Argentina and the United Kingdom to resume, as soon as possible, negotiations on the sovereignty dispute, in order to find a peaceful solution to that protracted controversy. The OAS General Assembly decided to continue to examine the question at its subsequent sessions until a definitive settlement had been reached thereon.

34. On that occasion, according to information provided by Argentina, the Argentine delegation inter alia expressed that "the British refusal to comply with the international obligations regarding this sovereignty dispute" disregarded the principles of the Charter of the United Nations, "particularly the obligation to actively seek the peaceful settlement of international disputes, which both countries expressly reaffirmed in the 1989 Madrid Joint Statement", and was contrary to "the United Kingdom's responsibility to contribute to strengthening international peace and security as a Permanent Member of the United Nations Security Council".

35. The position of the United Kingdom with regard to the consideration of the question of the Falkland Islands (Malvinas) by OAS was stated in a note verbale dated 3 June 2008 from the Permanent Observer of the United Kingdom to OAS to the Chair of the OAS General Assembly. The note verbale inter alia indicated that

the position set out by the United Kingdom's Permanent Representative to the United Nations, Sir John Sawers, in a written right of reply dated 1 October 2007 (A/62/469, annex) to the statement by President Néstor Carlos Kirchner of the Argentine Republic in the United Nations General Assembly on 25 September 2007 remained the United Kingdom's position. The United Kingdom had no doubts about its sovereignty over the Falkland Islands, South Georgia and the South Sandwich Islands and their surrounding maritime areas.[5]

36. The Heads of State and Government of the Ibero-American countries, meeting in San Salvador from 29 to 31 October 2008, issued a special communiqué on the question of the Falkland Islands (Malvinas) in which they reaffirmed "the need for the Governments of the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland to resume negotiations as soon as possible with a view to finding an early resolution to the sovereignty dispute relating to the Malvinas, South Georgias and South Sandwich Islands and the surrounding maritime areas in accordance with the resolutions of the United Nations and the Organization of American States and the purposes and principles of the Charter of the United Nations, including the principle of territorial integrity".[6]

37. The Presidents of the States parties of the Common Market of the South (MERCOSUR) and Associated States, in their Joint Communiqués dated 1 July and 16 December 2008, reaffirmed their support of the legitimate rights of Argentina and recalled the regional interest with regard to the sovereignty dispute.[7]

38. According to the administering Power, the United Kingdom is not a member of any of the aforementioned organizations, nor has it been represented at any of the aforementioned meetings, with the exception of OAS, where the United Kingdom has observer status.

IX. Future status of the Territory

A. Position of the administering Power

39. By a letter dated 29 September 2008 addressed to the President of the General Assembly (A/63/462, annex), in exercise of the right of reply to the remarks of the President of Argentina in her address to the General Assembly on 23 September 2008, the Permanent Representative of the United Kingdom stated the position of his Government as follows:

> "The British Government attaches great importance to the principle of self-determination as set out in Article 1.2 of the Charter of the United Nations and article 1 of the International Covenant on Civil and Political Rights. That principle underlies our position on the Falkland Islands.
>
> "The Falkland Islands are not a colonial enclave. Britain's Overseas Territories are British for as long as they want to remain British. The people of the Falkland Islands have chosen to retain their link with Britain. The democratically elected representatives of the Falkland Islands once again expressed their own views clearly when they visited the United Nations for this year's debate in the Committee of 24. They asked the Committee to

[6] See XVIII Cumbre Iberoamericana, www.oei.es/xviiicumbrecomunicados.htm.

[7] See www.mercosur.int.

recognize that they, like any other people, were entitled to exercise the right of self-determination. They reiterated that the people of the Falkland Islands did not wish for any change in the status of the Islands.

"There can be no negotiations on the sovereignty of the Falkland Islands unless and until such time as the islanders so wish.

"The United Kingdom has no doubts about its sovereignty over the Falkland Islands."

40. In his New Year's message to the Territory in January 2009, the Prime Minister of the United Kingdom, Gordon Brown, restated the commitment of the United Kingdom to the Islanders and their right of self-determination, against the backdrop of the twenty-fifth anniversary of the conflict over the Falkland Islands (Malvinas):

"Today we're not only welcoming in the New Year, but also a new Constitution for your Islands. This Constitution both reiterates the United Kingdom's commitment to your right to self-determination and enhances local democracy and accountability. I welcome this and I recognize that, through your full participation in the Constitutional Review, you have shown your unequivocal desire to remain British."[1]

B. Position of the Government of Argentina

41. As reflected in the official record of the meeting of the General Assembly on 23 September 2008 (A/63/PV.5), the President of Argentina, Cristina Fernández de Kirchner, in her address to the General Assembly, inter alia referred to the issue of the "Malvinas Islands, where, despite the resolutions of this body, despite all the measures taken here for the United Kingdom to agree, in virtue of what is set out in Article 33 of the Charter of the United Nations, to negotiate in peace between the parties, that country resolutely refuses to discuss with the Argentine Republic the issue of the Malvinas Islands". The President expressed her belief that "a member of the Security Council — one that is among the principal nations of the world in the defence of freedom, human rights and democracy — should give concrete proof that it is not just talk but that it is truly convinced that it is necessary to end this shame, that of a colonial enclave in the twenty-first century"; stated that "Malvinas is for Argentineans a State policy"; and requested "the cooperation that this body has always provided to once again urge the United Kingdom to agree to comply with international law and to demonstrate that it is serious in wishing to build a different world and a different citizenry".

42. Additional information on the position of the Government of Argentina can be found in section X.A. below.

X. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

43. The Special Committee considered the question of the Falkland Islands (Malvinas) at its 7th meeting, on 12 June 2008 (see A/AC.109/2008/SR.7). At that

meeting, the Special Committee decided to accede to the request of Argentina, Brazil, Paraguay, Peru and Uruguay to participate in the Committee's consideration of the item.

44. At the same meeting, statements by Mr. Stevens and Ms. Robertson from the Legislative Council of the Falkland Islands (Malvinas) were heard. Ms. Areguati and Mr. Clifton also made statements.

45. The representative of Chile, on behalf of Bolivia, Chile, Cuba and the Bolivarian Republic of Venezuela, introduced draft resolution A/AC.109/2008/L.8. The draft resolution reiterated that the way to put an end to the special and particular colonial situation in the question of the Falkland Islands (Malvinas) was the peaceful and negotiated settlement of the dispute over sovereignty between the Governments of Argentina and the United Kingdom. It requested both parties to consolidate the current process of dialogue and cooperation through the resumption of negotiations in order to find as soon as possible a peaceful solution, in accordance with the provisions of the relevant General Assembly resolutions.

46. At that meeting, the Foreign Minister of Argentina, Jorge Taiana, as reflected in the summary record of that meeting, reiterated the Argentine Republic's inalienable and imprescriptible rights over the Malvinas Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas, which had been unlawfully occupied by the United Kingdom through an act of force. Since 1833, the Argentine Government had maintained a strong and uninterrupted stance of protest against the continued illegal occupation of part of its national territory. The principle of self-determination was not applicable. The question involved the unique case of a colonial situation without a colonized population. In Argentina's view, to accept that the mere passage of time might grant rights to a power that occupied foreign territories against the wishes of local populations, or to the transplanted subjects of that power, would be to establish a dangerous precedent. The Government of Argentina remained convinced that negotiation between the parties was the only way to put an end to the dispute, and it was committed to respecting the way of life of the inhabitants of the islands, as provided for in its constitution and as requested of both parties by the United Nations.

47. Further, although Argentina had no doubts about its sovereignty over the Malvinas, South Georgia and the South Sandwich Islands and the surrounding maritime areas, it remained willing to negotiate, and to cooperate with the United Kingdom on practical aspects deriving from the de facto situation in the South Atlantic, under due legal safeguards. The United Kingdom, on the other hand, persisted in its refusal to negotiate, a behaviour seen by Argentina as unacceptable from any responsible member of the Organization, let alone a permanent member of the Security Council. The core of both parties' positions on the issue was familiar to all. The solution had to begin with negotiations. Indeed, the negotiations that had been conducted pursuant to General Assembly resolution 2065 (XX) had demonstrated that serious and immediate efforts from both parties could lead to a solution. For that reason, Argentina considered the good offices of the Secretary-General to be the only available option for bringing the parties to the negotiating table.

48. At the same meeting, the representatives of Bolivia, Brazil, China, Cuba, Ecuador, Grenada, Guatemala, Indonesia, Paraguay, Peru, the Russian Federation,

Sierra Leone, the Syrian Arab Republic, Tunisia, Uruguay and Venezuela (Bolivarian Republic of) also made statements.

B. Special Political and Decolonization Committee (Fourth Committee)

49. On 6 October 2008, during the debate on decolonization issues in the Special Political and Decolonization Committee (Fourth Committee) during the sixty-third session of the General Assembly, several delegations referred to the question of the Falkland Islands (Malvinas). The representative of Mexico, speaking on behalf of the Rio Group, reiterated the need for the Governments of the Argentine Republic and of the United Kingdom to resume negotiations to find a peaceful, just and definitive solution to the sovereignty dispute in accordance with the relevant resolutions of the General Assembly, the Special Committee, and OAS and with the principle of territorial integrity. The representative of Brazil, speaking on behalf of MERCOSUR member States and associated States, reiterated the support of MERCOSUR for the legitimate sovereign rights of the Argentine Republic over the Territory and urged the two parties to respect the will of the international community, as reflected in the relevant resolutions, and to resume negotiations in order to resolve their dispute (see A/C.4/63/SR.2).

50. The representative of the United Kingdom, in exercise of the right of reply, said that the United Kingdom's position on the issue was well known and had been reiterated on 29 September 2008 (A/63/462, annex) by the Permanent Representative of the United Kingdom. The United Kingdom had no doubts about its sovereignty over the Falkland Islands (Malvinas). There could be no negotiations on the sovereignty of the Territory unless and until such time as the Islanders so wished.

51. The representative of Argentina said that "the Malvinas, South Georgias and South Sandwich Islands and the surrounding maritime areas are an integral part of Argentina's territory and illegitimately occupied by the United Kingdom". He recalled that several General Assembly resolutions had recognized the existence of a sovereignty dispute referred to as the "question of the Malvinas Islands", urging both parties to resume negotiations towards a peaceful and lasting solution.

C. Action taken by the General Assembly

52. Under resolution 58/316, the General Assembly decided that the item entitled "Question of the Falkland Islands (Malvinas)" would remain on the agenda for consideration upon notification by a Member State. As of the date of the issuance of the present report, there had been no such notification by a Member State to the General Assembly.

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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and People

United States Virgin Islands

Working paper prepared by the Secretariat

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I. Background information

1. The United States Virgin Islands is a Non-Self-Governing Territory administered by the United States of America. The Territory is located in the eastern part of the Caribbean Sea, 1,075 miles south-east of Miami and 60 miles east of Puerto Rico. The total land area is about 352 square kilometres.[1] The Territory is made up of three main islands (St. Croix, St. John and St. Thomas) and one small island (Water Island). The capital, Charlotte Amalie, is located on St. Thomas. The Islands were Danish territory from 1754 to 1917, when they were purchased for $25 million by the United States of America. United States' citizenship was granted to the inhabitants of the islands in 1927. The Office of Insular Affairs carries out the Secretary of the Interior's responsibilities for the Territory.

2. The population of the Territory for 2008 estimated at 108,612, was close to the figure for 2007, with approximately 4,250 people living in St. John and the rest almost equally divided between St. Thomas and St. Croix. The composition of the Territory's population is 78 per cent black, 13 per cent white and 9 per cent other.[2] A population and housing census is planned for 2010.[3]

II. Constitutional, political and legal issues

3. The United States Virgin Islands is an organized, unincorporated Territory of the United States. Under the Organic Act of the Virgin Islands (1936) and its revision in 1954, the Territory has a measure of self-government over local affairs, including a Legislature, a unicameral body comprising 15 senators that are elected for a two-year term by popular vote. Executive power is vested in a Governor, who has been elected on the same ticket as the Lieutenant-Governor since 1970 by popular vote for a four-year term. The Governor is limited to two consecutive terms, but can be elected again after one full term out of office. The Governor appoints, with the advice and consent of the Legislature, the heads of the executive departments and has the power to approve or veto legislation and issue executive orders. In the November 2006 election for the position of Governor, John deJongh of the Democratic Party won a run-off against the Independent Party candidate with 57 per cent of the vote. On the national level, the Territory elects a delegate to the United States Congress, who is able to vote in committees.

4. The Territory's last legislative elections, held on 4 November 2008, resulted in the election of 15 senators, namely, 10 Democrats, 2 members of the Independent Citizens' Movement and 3 non-party affiliates. The next legislative elections will be held in November 2010. Democratic Candidate Donna M. Christensen ran unopposed in the general election and was re-elected to a seventh two-year term as the United States Virgin Islands Delegate to the United States Congress. In January 2009, she

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Note: The information contained in the present paper has been derived from published sources, including those of the territorial Government, and from information transmitted to the Secretary-General by the administering Power under Article 73 *e* of the Charter of the United Nations.

[1] Executive Budget for Fiscal Year 2009, p. 2; available at http://www.vi.gov/gvi-news/governor-de-jongh-presents-the-executive-budget-for-fiscal-year-2009.html.

[2] Office of Insular Affairs (www.pacificweb.org); United States Central Intelligence Agency, *The World Factbook*, last updated 19 March 2009.

[3] Congressional Quarterly, 21 May 2008.

was named to three subcommittees, namely on Health, Telecommunications and the Internet, and Oversight and Investigations.[4]

5. The Territory's judicial system has a District Court, a Superior Court and a Supreme Court. The Supreme Court which swore in its judges in December 2006, became operational in January 2007. The Supreme Court of the Virgin Islands is the appellate court of the Virgin Islands that hears appeals decided by the Islands' Superior Court. The establishment of the Supreme Court eliminates federal judicial involvement in purely local legal matters. More information on the Territory's judicial system can be found in the 2005 working paper (A/AC.109/2005/9).

6. Since the Organic Act of the Virgin Islands was revised by the administering Power in 1954, there have been four attempts to replace it with a locally written constitution approved by the people of the Territory, which would organize the internal mechanisms of Government. Although the United States Congress authorized the adoption of a local constitution in 1976, none of the four attempts made were successful.

7. In October 2004, former Governor Charles W. Turnbull signed into law the Fifth Constitutional Convention, which was to be the fifth attempt at elaborating a local constitution. After years of delay, an election for 30 delegates to form the Constitutional Convention took place in June 2007. The Convention opened on 29 October 2007. Initially, the elected delegates had until July 2008 to draft a constitution, but the 27th Legislature amended the enabling legislation, extending the time to 31 May 2009 at the request of the delegates. Once completed the draft has to be approved by a two-thirds majority of the Convention delegates.[5] The constitution will then be forwarded to the Governor, who has 60 days to add his comments before it is submitted to the United States Congress, which also has 60 days to review it, as well as the power to add or delete by amendment. Upon approval by Congress, a referendum could be held in the Virgin Islands to ratify the document.[6]

8. The Convention is working in 12 standing committees covering different issues such as legislation, jurisdiction, citizenship, finance and education.[7] Since the inauguration of the Convention, the delegates have expressed their concerns about the financial and organizational resources provided to them. In January 2008, the delegates approved a new budget proposal of $3.3 million to present to the territorial legislature.[8] In the Governor's revised budget of January 2009, an additional $200,000 was provided. As of 9 December 2008, the Convention had received a total of $418,290 in territorial Government funding to do its work. Questions have been raised by some delegates about the need for more funding for the Constitutional Convention from the administering Power. The issue was also raised on behalf of the President of the United Nations Association of the Virgin Islands by a petitioner addressing the Special Committee meeting on 11 June 2008.[9]

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[4] See www.donnachristensen.house.gov.

[5] Information provided by the administering Power on 23 January 2009.

[6] *The Virgin Islands Daily News*, 27 October 2007 (www.virginislandsdailynews.com).

[7] Ibid., 30 October 2007.

[8] *St. Thomas Source*, 15 January 2008; *The Virgin Islands Daily News*, 13 February 2007.

[9] See United Nations press release regarding the statement made by Judith Bourne: http://www.un.org/News/Press/docs/2008/gacol3177.doc.htm.

9. Questions have also been asked about the Convention's public records policy. In January 2009, the Constitutional Convention's executive committee embarked on a new policy whereby the circulation of the Convention's draft documents that the delegates were to debate and amend would be restricted. Such documents had previously been made available to everyone who attended Convention meetings. In this connection, one member of the Convention's executive committee, Mary Moorhead explained that some people were broadcasting incorrect information about the draft constitution based on incomplete drafts. Hearings are tentatively planned for April 2009 to share with the public the content of the draft constitution and to give the population a chance to recommend changes.[10]

10. At the Pacific regional seminar on decolonization, held in Indonesia in May 2008, Tregenza Roach of the University of the Virgin Islands, spoke about the University's role and the ramifications of the Constitutional Convention and the public education programme that the University was undertaking to inform the public in that regard. The public education programme is mandated by local law in support of the Constitutional Convention.[11]

11. During the previous seminar held in Grenada in 2007, the President of the University of the Virgin Islands, Dr. LaVerne Ragster noted that while the term "local constitution" appeared to suggest that it was an act of self-determination, United States federal law clearly stated that no local constitution could affect the United States Virgin Islands' status as a "territory or other property" of the United States as referred to in the territorial clause of the United States Constitution. This was confirmed in the United States Public Laws 94-584 of 21 October 1976, and 96-597 of 24 December 1980, where it is specified that such a constitution should "recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands". According to Dr. Ragster, the formulation of a local constitution, however, would not prevent the residents of the Territory from one day making a determination with regard to its ultimate political status.[12]

12. Regarding the Territory's political status, the first and only referendum on a range of political options was conducted in 1993. However, only 27 per cent of the electorate voted and, of those, 80.3 per cent voted to retain the current status. The result was considered invalid since less than 50 per cent of the electorate had voted.

III. Budget

13. The Territory's fiscal year begins on 1 July 2009. The Governor submitted a revised Financial Year 2009 Budget to the 28th Legislature on 9 January 2009, reflecting the current state of the global economy which continued to negatively affect the Territory. The Governor cautioned the incoming 28th Legislature that the upcoming fiscal year would be one of the most challenging in the Islands' history.[5]

14. On 13 January 2009, members of the 28th Legislature unanimously approved the revised $839 million budget, up from $779 million in 2008. The Director of the

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[10] *The Virgin Island Daily News*, 5 March 2009.

[11] The full statement can be found at http://www.un.org/Depts/dpi/decolonization/regional_seminars_statements_08/Tregenza%20Roach.pdf.

[12] The full statement can be found at http://www.un.org/Depts/dpi/decolonization/docs/seminar_statements_07/DP3%20Ragster.pdf.

Office of Management and Budget informed the Senate that General Fund revenues were projected to be $70.2 million less than previously projected in September 2008. Due to adjustments in Internal Revenue Matching Fund contributions and utilization of the budget stabilization or rainy day fund, the shortfall had been reduced to $36.8 million, which had been made up through budget cuts.[5] The revised budget has given priority to funding for negotiated salary increases for Government employees, and to provide for a recently approved health insurance contract which covers Government employees, retirees and their dependents. The revised budget also provides funding for an increased 3 per cent employer contribution to the Government Employees Retirement System,[13] which in October 2008 had reported a $66 million deficit in operational cash flow.[14]

15. As previously reported, legislation which repealed a 1936 federal law limiting the authority of the territorial Government to administer its own property tax system became law in 2007. In March 2008, the territorial Senate passed a property tax reform law which was signed into law by the Governor.[15] According to the administering Power, the Territory has moved towards finishing other needed steps, but has not yet had an original 2003 court injunction lifted. The Government went ahead and sent out tax bills based on new rates in August 2009, but was held in contempt of court by the District Judge who ordered the tax bills rescinded. The Government has appealed the ruling to the United States Third Circuit Court of Appeals and is awaiting a ruling.[5] According to the Governor, the current litigation has kept the Territory from collecting property taxes for the past two years. The Territory ended the fiscal year 2008 with a $70 million shortfall because of its inability to collect property taxes and could face up to $146 million in operating budgetary shortfalls if the matter is not resolved during the current fiscal year.

16. On 10 June 2008, the territorial Government approved legislation implementing tax increment financing in the Territory, an economic development tool that allows the Government to issue bonds based on projected increases in property and gross receipts taxes for a business or residential venture developed on government-owned land.[16] It is hoped that the programme will be a powerful economic development tool to harness future revenues to pay for current infrastructure and attract development in the Territory.[17]

17. On 28 April 2008, the administering Power announced a $41.5 million tax reimbursement for the Territory, as part of its Federal Economic Stimulus Act.[18] In addition, on 19 February 2009, the Governor announced that the Territory's economy stood to receive about $244.2 million in federal stimulus funding (see section IV below).

18. According to information provided by the administering Power, a significant milestone was achieved on 7 January 2009 when the United States Department of Housing and Urban Development (HUD) transferred 34 acres of land on St. Thomas back to the Virgin Islands Government. The territorial Government had originally

[13] http://www.governordejongh.com/news/archive/2009/02/020609-1.htm.

[14] *Caribbean Net News*, 28 October 2008 (www.caribbeannetnews.com).

[15] http://www.governordejongh.com/news/archive/2007/06/062907-3.htm; *Caribbean Net News*, 8 February and 11 March 2008.

[16] *Caribbean Net News*, 11 June 2008.

[17] *Virgin Islands Daily News*, 11 June 2008.

[18] State News Services, 28 April 2008 (http://www.statenewsservice.com/home.html).

sold the land to HUD for one dollar in 1995 with the understanding that HUD would construct much-needed affordable housing after Hurricane Marylyn had devastated the Territory earlier that year. The lack of construction of new homes, however, became a recurring issue of contention between HUD and the Virgin Islands Government. The Housing Authority Executive Director memorialized the transfer by returning the original dollar that had marked the transfer.[19] In addition, on 19 February 2009, HUD awarded the Territory $570,662 in grants to help alleviate the homeless problem, marking the first time in recent years that the Territory has secured all available funding under the HUD Continuum of Care grant programme.[20]

IV. Economic conditions

A. General

19. During a press conference on 19 February 2009, the Governor said that, although the details had not been finalized, the Territory stood to receive about $244.2 million in stimulus funding. To ensure full accountability for incoming federal funds, the Governor announced plans to establish a new Office of Economic Opportunity as part of the Virgin Islands Public Finance Authority.[20]

20. The largest allocation of the stimulus money, $67 million, would become part of the territorial fiscal stabilization fund. According to the current formula, 81 per cent of these funds must be spent on educational initiatives. The second largest portion of funds, a total of $50 million, would go towards tax credits for residents of the Territory. Other large areas of funding in the stimulus package included more than $33 million for energy and water projects, $22.8 million for education programmes and nearly $20 million for transportation infrastructure.

21. For important infrastructure projects not covered by the stimulus package but in need of funding to be completed, the territorial Government planned to put forward a local stimulus bill. The Government's strategy to stabilize the local economy was to seek legislative authorization for the Virgin Islands Public Finance Authority to issue up to $400 million in gross receipts tax revenue bonds to provide financing for close to $341 million of essential public projects. For instance, the construction sector was experiencing very little private development activity, and the territorial Government estimated that their proposal would create 265 new full-time jobs and increase wages in the Territory by over $100 million, thereby also increasing governmental tax receipts by $60 million over a six-year period.[5]

22. A key element in the Territory's economic policy continues to be the Economic Development Commission tax incentive programme. Responsible for promoting the development and diversification of the territorial economy, the Commission is empowered to grant tax reductions such as full exemption from property taxes and up to 90 per cent of local income taxes (see also paragraphs 36-37, below).

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[19] Information provided by the administering Power on 23 January 2009; see also *The Virgin Islands Daily News*, 8 January 2009.

[20] *The Virgin Islands Daily News*, 20 February 2009.

B. Tourism

23. The tourism sector is the most important industry on the Islands, accounting for about 70 per cent of gross domestic product (GDP). According to the Governor's January 2009 State of the Territory Address, overall tourism numbers fell sharply at the end of 2008. Hotel occupancy had declined by one third, average hotel rates had fallen 25 per cent and cruise passenger spending had been curtailed.[21]

24. The tourism sector, however, is expected to rebound in fiscal year 2009 stemming from a strong collaborative marketing and promotional campaign by the Department of Tourism and the hotel and tourism associations to bring more overnight visitors to the Territory. The Tourism Department is increasing marketing efforts in Europe in order to take advantage of the depreciation of the United States dollar. As part of these efforts, in January 2009 the Department launched a new $250,000 website.[22] A resurgence is also expected in cruise passengers on St. Croix as some 50 cruise ship calls are scheduled for 2009 bringing 121,700 passengers and 44,000 crew members.[23]

25. For the first nine months of fiscal year 2008, which ended on 30 June 2008, the number of visitors to the Territory increased 3.3 per cent to 2,147,444 from 2,079,250 compared to the same period in fiscal year 2007. Air arrivals grew a strong 6.6 per cent, while cruise passenger arrivals were less robust at 3.3 per cent. For the same period, there were 561,168 air visitors compared to 526,534 air visitors for fiscal year 2007, and 1,586,276 cruise passengers compared to 1,552,716 the year before.

26. On 2 June 2008, the territorial Government announced the creation of a panel to address the reduced number of flights to the Islands. In July 2008, the Virgin Islands Port Authority launched an Air Service Development Project for St. Croix's Henry E. Rohlsen Airport, with the goal of improving the availability and affordability of air service between the Islands and the United States.[24] Talks were also initiated with small regional carriers to expand services to the Territory.[25] Since December 2008, same-day flight connections, four days per week via Atlanta, Georgia from Copenhagen to St. Thomas on Delta Air Lines has been in effect.[26]

27. In addition, on 31 October 2008, US Airways announced the return of non-stop flight service to the island of St. Thomas from two of the destination's key mainland markets, Philadelphia, Pennsylvania and Charlotte, North Carolina, representing an overall 3 per cent increase in air service to St. Thomas for the winter season compared to the same period in 2007.

28. In August 2008, the Department of Tourism and the Economic Development Authority hosted a Preparing the Path conference on St. Croix aimed at preparing the community for the return of the cruise ship industry, and in November, the agencies sponsored two days of free customer service training designed to prepare

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[21] State of the Territory Address, 26 January 2009 (http://www.governordejongh.com/features/2009/address/SOTT_text.pdf).

[22] *The Virgin Islands Daily News*, 29 January 2009.

[23] Executive budget for 2009, http://www.governordejongh.com/features/2008/budget/index.html.

[24] *Caribbean Net News*, 16 July 2008.

[25] The Associated Press, 3 June 2008.

[26] *Caribbean Net News*, 24 September 2008.

local business leaders and their front-line employees for the arrival of cruise passengers.[27]

C. Manufacturing and industry

29. The manufacturing sector contributes about 11 per cent of GDP and accounts for 5 per cent of jobs in the Territory. The sector remains dominated by Hovensa LLC, one of the largest and most modern refineries in the world. Situated in St. Croix, it produces approximately 495,000 barrels of refined petroleum products daily.[28]

30. The rum industry has consistently been the second biggest performer in the Territory's manufacturing sector. In July 2008, a 30-year agreement between the Government and the beer, wine and spirits producer Diageo PLC for the construction of a new rum distillery on St. Croix was signed into law. The agreement is expected to bring about $100 million a year in new excise tax revenues for the Territory throughout the 30-year period. Rum production is expected to start in 2012, with the distillery producing an average of 20 million proof gallons each year.[29] The construction plans are currently in the process of being approved.[21]

31. A tax rebate formula enacted by Congress in 1999, which favoured the export of rum to the United States for two-year periods at a time, expired on 31 December 2007. On 3 October 2008, the United States House of Representatives approved a two-year extension of the rum tax formula retroactively to 1 January 2008.[30]

32. Jewellery manufacturing had in recent years lost its importance in the Territory, but on 19 June 2008, the United States Departments of Commerce and the Interior issued a rule amending their regulations governing jewellery duty-refund benefits for producers in the Territory.[31]

D. Construction

33. Jobs in the construction sector remained weak during the period under review and had declined by 6.1 per cent by 30 June 2008. The number of construction jobs averaged 3,419 for the first nine months of fiscal year 2008 compared to 3,643 for the corresponding period in fiscal year 2007. Construction activity declined in part from a winding down of tourism-related development, housing and seaports, and the development of commercial and residential properties. The fall in residential construction is attributed to the tighter lending conditions and secondary effects of the sub-prime mortgage market collapse in the United States.

34. Construction activity is projected to increase in 2009 from private construction activities in hotel development, road construction, seaport expansion, public and private sector housing development and retail and commercial office space.[32] In

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[27] Ibid., 30 January 2009.

[28] www.hovensa.com.

[29] http://sts.onepaper.com, 25 July 2008.

[30] *Caribbean Business*, 9 October 2008 (www.caribbeanbusinesspr.com).

[31] *Federal Register*, vol. 73, No. 119 (19 June 2008).

[32] United States Virgin Islands Bureau of Economic Research, *Economic review* (July 2008) (http://www.usviber.org/otherdocuments.htm).

addition, the previously mentioned rum distillery facility is expected to break ground in the second quarter of 2009.

35. On 25 February 2009, the United States Department of Housing and Urban Development announced a $9,415,808 recovery grant to the Virgin Islands Housing Authority's Public Housing Capital Fund. That money will be used to make long-vacant apartments ready for occupancy and to make infrastructure improvements at the Territory's public housing communities.[33]

E. Financial services

36. The financial services sector, which holds a 6 per cent share of total employment, continues to show a decline in jobs, which is partly due to a drop in companies participating in the United States Virgin Islands Economic Development Commission incentive programme, brought about by the American Jobs Creation Act of 2004. The number of jobs in this sector averaged 2,470 for the first nine-month period of fiscal year 2008, down from 2,493 for the corresponding period in fiscal year 2007. The Act changed the residency requirement for the Economic Development Commission incentive programme, establishing that bona fide residents must be present in the Territory for at least 183 days over a period of three years. The final ruling also confirmed that taxes on income connected to United States sources should be paid to the United States Revenue Service. The residency and source income requirements ostensibly caused a number of companies to leave the Territory. Prior to the ruling, there were about 121 beneficiary companies; currently, there are 98 companies.[34]

37. The worldwide financial service provider Stanford Financial Group had applied to become a beneficiary of the territorial tax incentive programme. The company broke ground in February 2008 on a 37-acre site on St. Croix, building a complex that was to house the company's worldwide management functions.[35] In mid-February 2009 the company was accused of "massive ongoing fraud" by the United States Securities and Exchange Commission.

F. Agriculture and fisheries

38. Historically, sugar cane and to a lesser extent cotton were the main revenue sources for the Territory's economy. Currently, the agricultural sector, mainly fruit and vegetable cultivation and cattle-raising, accounts for only about 1 per cent of GDP and 1 per cent of the labour force, with most food being imported.[36] There are, however, renewed grass-roots efforts to improve the food security of the Territory. The President of the Virgin Islands Farmers' Cooperative received $600,000, provided by the United States Department of Agriculture through a loan agreement with the Virgin Islands Economic Development Authority, to enter into a long-term lease for 60 acres of land near the Beeston Hill area to increase the production and distribution of farm products.[5]

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[33] *The Virgin Islands Daily News*, 26 February 2009.

[34] United States Virgin Islands Bureau of Economic Research, *Economic review* (July 2008).

[35] *Caribbean Net News*, 9 January and 23 February 2008.

[36] Central Intelligence Agency, *The World Factbook*, 2008.

39. On 6 October 2008, it was announced that the Territory was eligible to receive grant monies which previously had been available only to the 50 contiguous states and Puerto Rico. The Specialty Crops Competitiveness Act of 2004 authorized the United States Department of Agriculture's Agricultural Marketing Service to provide nationwide assistance for the promotion of specialty crops. Apicultural specialty commodities such as honey, beeswax, and bee pollen are seen as having excellent production and market potential in the Virgin Islands.[37]

40. While the commercial fishing sector in the Territory is small, there is growing concern about the marine ecosystem and the fish population. In May 2008, the Department of Planning and Natural Resources announced that it would enforce a ban on fishermen using gill and trammel nets, as the nets were seen as contributing to overfishing. According to marine biologists and scientists, the nets are so effective that they capture entire schools of breeding fish, thus decimating species of fish. The decision to ban the nets will help the Territory meet a mandate set by the National Oceanic and Atmospheric Administration to stop overfishing by 2010, according to the Commissioner for the Department of Planning and Natural Resources.[38]

G. Transportation and communications

41. The Territory has five major docking facilities, which can accommodate cruise ships and some naval vessels. Three of the docks are on St. Croix, namely South Shore, Gallows Bay and Frederiksted. The remaining two are on St. Thomas, namely, the facilities operated in Crown Bay by the Virgin Islands Port Authority, a semi-autonomous Government agency, and the Islands-owned West Indian Company. The Port Authority operates two international airports, Cyril E. King Airport on St. Thomas and Henry E. Rohlsen Airport on St. Croix. In his 2009 State of Territory Address, the Governor confirmed the receipt by the Port Authority of $10 million in discretionary funding from the United States Department of Transportation for the Territory's airports after a five-year hiatus.[21]

42. In his 2008 State of the Territory Address, Governor deJongh announced that a priority in the Territory's multi-year investment plan would be to address traffic and transportation issues, encompassing roads, parking and inter-island transportation.[39] To that end, it was announced in November 2008, that $25.5 million has been allocated to a local infrastructure and improvement plan to tackle necessary projects expeditiously.[40]

H. Utilities, water and sanitation

43. Electricity is thermally generated using imported fuels. The Virgin Islands Water and Power Authority (WAPA) serves approximately 47,000 customers. The Territory's electric rates are among the highest in the United States. On 28 June 2008, the United States House Appropriations Committee included $500,000 for

[37] *Caribbean Net News*, 6 October 2008.

[38] *The Virgin Islands Daily News*, 24 May 2008.

[39] State of the Territory Address, 22 January 2008 (www.governordejongh.com/features/2008/address/remarks.html); *The Virgin Islands Daily News*, 24 January 2008.

[40] *Caribbean Net News*, 24 November 2008.

funding of a comprehensive engineering study of practical ways to connect the electricity grids between all three islands and to reduce utility bills for consumers in the Territory.[41] Moreover, according to the chief of WAPA, consideration has been given to the possibility of building a pipeline to bring in natural gas from a bigger grid in Puerto Rico.[42] On 10 April 2008, the territorial Government received a federal grant of $50,000 to explore options that would allow the Territory to reduce its dependency on imported petroleum by diversifying the Territory's energy options.[43]

44. Owing to limited freshwater supplies, salt water is used extensively for non-domestic purposes, including firefighting and sewerage. The Water and Power Authority desalinates water and collects rainwater for domestic use. A desalination plant on St. Thomas produces 4.45 million gallons per day. Wells, particularly on St. Croix, supply the remainder of the freshwater necessary. Owing to the high cost of water, average daily consumption is about 50 gallons per person per day, about one third the United States average.

45. On 8 May 2008, in a settlement with the United States Environmental Protection Agency, the territorial Government agreed to develop, fund and implement a campaign to foster the public's awareness of proper household waste management and disposal practices.[44]

V. Social conditions

A. General

46. On 21 May 2008, during a meeting at the United States House Natural Resources Subcommittee on Insular Affairs, it was explained that the Territory is excluded from the American Community Survey because of its relatively small size. This creates significant data disparities. Thus, the Territory cannot be compared to other states, whereas such comparisons are critical to understanding the extent of child poverty in the Islands and the challenges facing Islands communities.[45]

47. The exclusion of the Virgin Islands from United States based data sources also leads to the disparate consideration of the Territory from legislation critical to the well-being of children and families, such as the No Child Left Behind Act of 2001. United States based organizations and foundations also use the American Community Survey to determine need for funding. A health initiative by a major foundation left out the Territory because their data were not in the Survey, which was their basis for grant-making consideration.

48. In connection with a surge in crime in May 2008, the territorial Senator Basil C. Ottley, Jr., requested an emergency summit on poverty and crime in order to explore their linkage, while noting that the most lasting costs of poverty were

[41] Ibid., 28 June 2008.

[42] The Associated Press, 25 July 2008.

[43] US Fed News, 10 April 2008.

[44] United States Environmental Protection Agency, 8 May 2008, http://yosemite.epa.gov/OPA/ADMPRESS.NSF/d0cf6618525a9efb85257359003fb69d/36d463dfd89782e285257443007472ed!OpenDocument.

[45] CQ Congressional Testimony, 21 May 2008, http://corporate.cq.com/wmspage.cfm?parm1=12.

exacted from children. He noted that the territorial poverty rate was 27.4 per cent, compared to 12.7 per cent in the United States mainland, and that the rate of children living in poverty had increased to 35 per cent. According to Mr. Ottley the first step towards addressing the issues of poverty, crime and the economy was to develop a body of statistical knowledge which would provide a guide to educators, legislators and others in developing responsive and effective public policy.[46]

B. Labour

49. Employers in the Territory must follow federal and territorial labour laws, such as those regulating minimum wages, occupational health and safety standards and payment of Social Security tax and unemployment insurance. The minimum hourly wage reached $6.55 in July 2008. The unemployment rate in mid-2008 held almost steady at 5.9 per cent compared to 6 per cent in 2007.[47] Compared to the previous period, in mid-2008, 140 jobs had been added to the economy, mostly in the private sector, which provides about 70 per cent of the Territory's employment opportunities.[48]

50. However, according to the 2009 State of the Territory Address, layoffs in the private sector were increasing, businesses were closing and unemployment had begun to rise. Economic development and job creation therefore remained a priority area of action in the year ahead the Governor said.

51. The January 2009 stimulus package included a $250 bonus for retirees receiving United States Social Security payments and veterans receiving benefits, as well as extended unemployment insurance and $100 more in monthly benefits for the unemployed.

C. Education

52. Education is compulsory and free for all children between five and a half and 16 years of age. The territorial Department of Education administers 19 schools on St. Thomas and 17 on St. Croix.[48]

53. In April 2008, the United States Senate Committee on Energy and Natural Resources started hearings on a bill to authorize the Secretary of the Interior to enter into a long-term lease with the territorial Government to establish the first school on the island of St. John.[49] On 23 June 2008, the authorization of a $200,000 federal technical assistance grant to conduct various studies at a proposed site in Estate Catherineberg was announced.[50]

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[46] *St. Thomas Source*, 30 May 2008.

[47] United States Virgin Islands Bureau of Economic Research, *United States Virgin Islands Economic Review and Industry Outlook*, April 2008 (http://www.usviber.org/pdfs/EconReviewApr2008.pdf).

[48] Executive Budget for Fiscal Year 2009 available at http://www.vi.gov/gvi-news/governor-de-jongh-presents-the-executive-budget-for-fiscal-year-2009.html.

[49] *FNS Daybook*, 23 April 2008 (http://www.fnsg.com).

[50] *Caribbean Net News*, 23 June 2008.

54. As mentioned earlier, the January 2009 federal stimulus package included $67 million, of which 81 per cent must be spent on educational initiatives in the Territory.

55. According to the Governor's 2009 State of the Territory Address, annual yearly performance records have shown a 16 per cent increase in the number of third grade students attaining proficiency in reading, while proficiency in mathematics increased by 8 per cent among third graders and 12 per cent among fifth graders.[21]

56. The University of the Virgin Islands has campuses on St. Thomas and St. Croix and approximately 2,400 full- and part-time students. It offers bachelor's degree programmes in 33 fields and master's degree courses in education, business and public administration, as well as a more recent master's degree in marine and environmental science.[51]

D. Public health

57. According to the Bureau of Economic Research, 50 per cent of all United States Virgin Islands residents do not have health insurance, compared to 17 per cent nationwide.[52]

58. For fiscal year 2008, the Government's health insurance plan totalled $96.5 million, with the territorial Government paying 65 per cent of the plan's premiums and Government employees paying the remaining 35 per cent. The cost of the plan will increase to $103.8 million for fiscal year 2009.[47]

59. Unlike in the United States mainland, Medicaid (the federal- and state-funded health-care programme for low-income individuals and families) is not an entitlement programme in the Territory, which means that federal funding is capped. In testimony given at a meeting on Insular Affairs in Washington, D.C., in February 2008, Governor deJongh said that the federal Medicaid funding provided to the Territory was far from adequate, and requested more federal support to "ensure that the neediest residents in the Territories received no less favourable treatment than the neediest residents in the United States".[53]

60. In November 2008, Governor deJongh, joined voices with the Governors of the Commonwealth of the Northern Mariana Islands and Guam in requesting fair and equitable treatment for the United States insular territories regarding temporary increases for the federal medical assistance percentage. Under the Job Creation and Unemployment Relief Act of 2008 passed by the House of Representatives, the territories were not eligible for the additional federal medical assistance percentage point increases made available to the 50 states and the District of Columbia.[54] With regard to the 2009 federal economic stimulus money for the Territory, $9.2 million is included for additional Medicaid funds over two years.[55]

61. A new $18.5 million, 25,000 square foot Virgin Islands Cardiac Center at the Juan F. Luis Hospital in St. Croix opened on 23 October 2008. The Center is seen by

[51] www.uvi.edu.

[52] *St. Thomas Source*, 1 February 2008.

[53] Ibid., 27 February 2008.

[54] www.guamgovernor.net, 21 November 2008.

[55] *The Virgin Islands Daily News*, 10 March 2009.

many as having catapulted the Territory into the top tier of the Caribbean health-care system.[5]

62. In February 2009, the Virgin Islands Government entered into a three-year agreement with a Denmark-based pharmaceutical company and global leader in diabetes research and care, to promote diabetes awareness and prevention in the Virgin Islands. The agreement includes a $300,000 grant to the Territory, which will be disbursed over a three-year period.[56]

E. Crime and crime prevention

63. According to the Governor's 2009 State of the Territory Address, 2008 had seen a decline in homicides, an increase in the number of arrests, more successful prosecutions putting more criminals in jail, and the tripling of gun confiscations. The Virgin Island's 2007 homicide rate per capita was 42 for every 100,000 residents, compared to a national rate of 5.5 homicides per 100,000 residents, and the Territory continued to be one of the most violent places in the United States.[57]

64. Despite the use of auxiliary and retired police officers, the Territory continues to be challenged by staffing shortages in this sector, but recruitment efforts have been broadened to include off-island applicants.[58]

65. On 27 June 2008, the House Appropriations Committee of the administering Power included $600,000 for the funding of a new "911" emergency communications system for the Territory. The entire multi-year project is expected to cost a total of $9.5 million.[59]

66. On 4 November 2008, the Territory's Attorney General announced that the Territory's Department of Justice was the recipient of more than $679,000 in federal grants to assist in the development and enhancement of several territory-wide law enforcement programmes and initiatives.[60]

VI. Environment

67. On 26 March 2008, the National Parks Conservation Association published a report stating that the Territory's National Park and Coral Reef National Monument were at risk partly due to development on privately owned land within and adjacent to park boundaries. The report cited concerns about the effects of global climate change on sensitive coral reefs and warned that the development within park boundaries was causing the proliferation of damaging non-native species, as well as wildlife habitat fragmentation. The report also noted that chronic funding and staffing shortfalls had limited the ability of the National Park Service to protect the parks historic structures and marine ecosystems.[61]

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[56] *The Virgin Islands Daily News*, 28 February 2009, and www.governordejongh.com/news/archive/2009/02/index.html.

[57] *The Virgin Islands Daily News*, 16 January 2008.

[58] State of the Territory Address, 26 January 2009.

[59] *Caribbean Net News*, 28 June 2008.

[60] Ibid., 4 November 2008.

[61] States News Services, 26 March 2008.

68. The United States Virgin Islands faces recurrent hurricanes and flooding, in addition to being located within an earthquake-risk zone. The Federal Emergency Management Agency provides programmes of mitigation, preparedness, response and recovery in the Territory through the Virgin Islands Territorial Emergency Management Agency (VITEMA).

69. A strong earthquake jolted people awake on 11 October 2008 in both the British and the United States Virgin Islands, as well as in nearby Puerto Rico. The United States Geological Survey said the quake had a magnitude of 6.1 on the Richter scale. According to disaster officials in the British Virgin Islands there were no reports of significant damage or injuries.[62] For fiscal year 2009 federal funding for VITEMA is approximately $4 million.[63]

70. In October 2008, during Hurricane Omar authorities tried to contain oil spills after more than 40 boats sank or washed ashore. The storm caused more than $700,000 in damage to roads in St. Croix and destroyed more than 100 utility poles in the eastern region.[64]

VII. Regional organizations and other partners

A. United Nations system

71. The United States Virgin Islands is an associate member of the Economic Commission for Latin America and the Caribbean (ECLAC). In 2007, the territorial Government began seeking ties with the Caribbean Community (CARICOM).

B. Regional organizations and other partners

72. As previously reported, the question of the continued functioning of the Inter-Virgin Islands Council was addressed during the visit of Governor DeJongh to the British Virgin Islands in March 2007, when he underscored his commitment to seeing the Council continue to perform its vital role of addressing issues that are of concern to the two Territories.[65] It is expected that a further meeting of the Inter-Virgin Islands Council will be convened in 2009.

VIII. Military issues

73. The Territory stands to obtain its own United States Coast Guard presence sometime in early 2009 when a new boat will be assigned to the Territory. The boat will be involved in search and rescue, law enforcement, maritime homeland security and fisheries/marine sanctuary patrols, as well as illegal drug and alien migrant interdiction duties off the Islands and Puerto Rico.[5] On 20 February 2009, the first

[62] Associated Press, 11 October 2008.
[63] *The Virgin Islands Daily News*, 1 August 2008.
[64] Associated Press, 20 October 2008.
[65] http://www.governordejongh.com/news/archive/2007/03/031506-2.html.

United States Army Reserve unit was established in the Territory. The unit will have 21 members.[66]

IX. Future status of the Territory

A. Position of the territorial Government

74. Developments regarding discussions on the future status of the United States Virgin Islands are reflected in section II above.

B. Position of the administering Power

75. Most recently, in a letter dated 2 November 2006 addressed to the American Samoa Congressman, the Assistant Secretary of State for Legislative Affairs elaborated the position of the United States Government on the status of American Samoa and other United States Insular Areas, which was considered equally valid for 2008. In his letter, the Assistant Secretary indicated that the status of the Insular Areas regarding their political relations with the federal Government was an internal United States issue, and not one that came under the purview of the Special Committee of 24. The letter also noted that the Special Committee of 24 had no authority to alter in any way the relationship between the United States and those Territories and no mandate to engage the United States in negotiations on their status. The letter further stated that at the same time, in accordance with its obligations under the Charter of the United Nations to provide regularly to the United Nations statistical and other information of a technical nature relating to the economic, social, and educational conditions, the federal Government did submit annual updates on United States Territories to the Special Committee of 24 as a demonstration of United States cooperation as an administering Power and as a corrective to any errors in information that the Special Committee of 24 might have received from other sources.[67]

C. Action taken by the General Assembly

76. On 5 December 2008, the General Assembly adopted, without a vote, resolutions 63/108 A and B, based on the report of the Special Committee transmitted to the General Assembly[68] and its subsequent consideration by the Special Political and Decolonization Committee (Fourth Committee).[69] Section XI of resolution 63/108 B concerns the United States Virgin Islands. Under that section's operative paragraphs, the General Assembly:

> 1. *Welcomes* the establishment of the Constitutional Convention in 2007, and requests the administering Power to assist the territorial Government in achieving its political, economic and social goals, in particular the

[66] *The Virgin Islands Daily News*, 21 February 2009.
[67] *Samoa News*, 7 November 2006.
[68] *Official Records of the General Assembly, Sixty-third session, Supplement No. 23* (A/63/23).
[69] A/63/408.

successful conclusion of the ongoing internal Constitutional Convention exercise;

2. *Requests* the administering Power to assist the Territory by facilitating its work concerning a public education programme, consistent with Article 73 *b* of the Charter of the United Nations and, in that regard, calls upon the relevant United Nations organizations to provide assistance to the Territory, if requested;

3. *Reiterates its call* for the inclusion of the Territory in regional programmes of the United Nations Development Programme, consistent with the participation of other Non-Self-Governing Territories;

4. *Appreciates* the efforts made to continue the work of the Inter-Virgin Islands Council between the elected Governments of the United States Virgin Islands and the British Virgin Islands to advance cooperation between the two neighbouring Territories.